

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

CRAIG BYRON THARP	§	
v.	§	CIVIL ACTION NO. 6:05cv126
J.B. SMITH, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Craig Tharp, proceeding *pro se*, filed this civil rights lawsuit complaining of alleged violations of his constitutional rights during his confinement in the Smith County Jail in 2002. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Tharp's petition was received by the Court on April 6, 2005, but the signature line is dated January 4, 2003. The complaint necessarily involves incidents occurring prior to January of 2003, and in fact it refers to events in November and December of 2002.

On June 14, 2005, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed based upon the expiration of the statute of limitations. The Magistrate Judge stated that it was not known where the lawsuit had been between January of 2003 and April of 2005, but noted that Tharp had filed other lawsuits during this time period and was not being denied access to court.

Tharp filed objections to the Magistrate Judge's Report on June 20 and July 25, 2005. In his first set of objections, Tharp argued that the statute of limitations did not run out on all of his claims from when he was in the Smith County Jail, because he was confined there until August of 2003. However, the lawsuit plainly did not involve any claims after January of 2003, the date that it was signed. Rather than sending an old lawsuit form to the Court, Tharp could have re-drafted his complaint in April of 2005, incorporating all of his claims concerning Smith County, and filed his lawsuit at that time; as noted by the Magistrate Judge, Tharp has filed other lawsuits between January of 2003 and April of 2005, and could have done so with these claims as well.

In his second set of objections, Tharp complains that the Magistrate Judge improperly denoted his complaints as "frivolous" when they are not. He also says that he has not been allowed to correspond with an inmate named William Henry Harrison, now in prison in Virginia, but fails to show how such correspondence, even if allowed, would pertain to the issue in this case, which is that the claims are barred by limitations.<sup>1</sup> Tharp's objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in the cause, the Report of the Magistrate Judge, the Plaintiff's objections thereto, and all other documents and filings in the record. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

---

<sup>1</sup>Tharp says that he believes that "Harrison's claim will soon be dismissed by Judge Steger." Court records show that inmate William Henry Harrison did file a lawsuit concerning the conditions of confinement in the Smith County Jail, and that this lawsuit was dismissed as frivolous on June 9, 2003. Harrison appealed, and the Fifth Circuit upheld the dismissal, stating that "the district court did not err in determining that Harrison's assertions that the conditions of confinement violated constitutional standards were frivolous and failed to state a claim for which relief could be granted." Harrison v. Smith, slip op. no. 03-40924 (5th Cir., Feb. 16, 2004) (unpublished).

ORDERED that the above-styled civil rights lawsuit be and hereby is DISMISSED with prejudice as frivolous. It is further

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

**So ORDERED and SIGNED this 30th day of August, 2005.**

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE**